



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
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March 12, 2012

Thomas E. Mason
4800 S 930 E
Wolcottville, Indiana 46795

Re: Formal Complaint 12-FC-42; Alleged Violation of the Access to Public Records Act by the LaGrange County Auditor

Dear Mr. Mason:

This advisory opinion is in response to your formal complaint alleging the LaGrange County Auditor (“Auditor”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Kurt Bachman, Attorney, responded on behalf of the Auditor. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request on January 11, 2012 to inspect or copy all requests for public information (“Request Forms”) received by the Auditor for the years 2009, 2010, and 2011. You had previously made this request of the Auditor in prior years and discovered that the Request Forms had been destroyed. You want to make certain that all Request Forms, including your own, were on file with the Auditor.

On January 12, 2012, Kurt Bachman, Attorney, responded to your request and acknowledged its receipt. On February 9, 2012, Mr. Bachman sent further written correspondence and provided that many of the Request Forms submitted to the Auditor during the time period that you sought had already been provided to you. When you made your original request for records and submitted a Request Form, a copy of the Request Form you submitted was provided to you in the Auditor’s original response. As the APRA requires that an agency to only provide one copy of a record, your request as to prior Request Forms that you have submitted was denied.

You believe that the Auditor has violated the APRA by failing to provide you with copies of Request Forms that you previously filed with the Auditor. You further advise that under the APRA, you are entitled to make certain that all requests for public records, *including your own*, are still on file with the Auditor (emphasis added).

In response to your formal complaint, Mr. Bachman advised that the Auditor received your written request on January 11, 2012 to inspect and copy all Request Forms submitted to the Auditor for a given period. Mr. Bachman responded on behalf of the Auditor on January 12, 2012 and acknowledged the receipt of your request. After a search of all records had occurred, Mr. Bachman provided to you in writing on February 8, 2012 that the Auditor had compiled all the Request Forms that were sought and attempted to establish a convenient time for you to come in and inspect the records. Mr. Bachman further informed you that the Auditor would not provide you with additional copies of Request Forms that you had already been provided to you.

After receiving Mr. Bachman's correspondence, you came to the Auditor's office unannounced. You paid for the Request Forms that had been compiled by the Auditor (which did not include your own prior Request Forms) and left without any objection or further arrangements. You thereafter filed your Formal Complaint with the Public Access Counselor's Office to which you allege that you have not been provided a copy of your own prior Requests Forms.

Pursuant to the APRA, you have a right to inspect and copy the public records of the Auditor during the regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a). The APRA provides that you are entitled to one (1) copy of a record if the Auditor has reasonably access to a copy machine. *See* I.C. § 5-14-3-8(e). The Auditor does not dispute or deny that you are entitled to inspect and copy the Request Forms that are sought, only that the Auditor has already provided you with at least one copy of your prior Request Forms that have been filed. The Auditor is not required to provide you with multiple copies. Since May 2009, you have filed 79 requests for records; in response to each request that have been submitted, a copy of the Request Form that you submitted has been provided to you by the Auditor and/or County when it responded to your original request. The Public Access Counselor has held on many occasions that a public agency is not required to provide more than one copy of a record, even in those instances when the requestor lost or misplaced the original records that were produced. *See Opinion of the Public Access Counselor 08-FC-220.*

You did not dispute the fact that you have already been provided with one copy of the Request Forms. Alternatively, upon reaching a convenient time for all parties, you are more than welcome to come and inspect the Request Forms at the Auditor's Office so that you can confirm that they are on file. On February 28, 2012, you were sent further written correspondence by Mr. Bachman seeking guidance whether you still desired to inspect the prior Request Forms that had been filed.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See* I.C. § 5-14-3-1. The Auditor is a public agency for the purposes of the APRA. *See* I.C. §



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5-14-3-2. Accordingly, any person has the right to inspect and copy the Auditor's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the Auditor responded to your request within the time frames provided in section 9 of the APRA.

The APRA requires a public agency to provide one copy of a disclosable public record but does not require an agency to provide additional copies or to repeatedly provide copies of a particular record. *See* I.C. § 5-14-3-8(e). The Auditor is correct that the Public Access Counselor has issued multiple opinions that have provided that a public agency is not required to provide duplicative copies of the same record. *See Opinions of the Public Access Counselor 07-FC-19; 08-FC-75; and 08-FC-259*. You allege that the Auditor has misinterpreted 5-14-3-8(e) in that the copies of the Request Forms that had previously been provided to you, was done so voluntary by the Auditor, and not in response to an APRA request for the Request Forms. It is not disputed that you have already been provided with a copy of your previously filed Request Forms and that the Request Forms that have previously been produced, have not been altered in any fashion since their original production. I am not aware of any prior relevant case law or advisory opinions issued by the Public Access Counselor dealing with the applicability of voluntary disclosures and the APRA or whether a voluntary disclosure by an agency would meet the requirements of producing one copy of a record pursuant to I.C. § 5-14-3-8(e). As to this formal complaint, it is my opinion that the Auditor did not violate the APRA if it previously provided an identical copy of the Request Forms to you in response to your original request and has offered you the opportunity to inspect your previously filed Request Forms in the Auditor's office at a mutually acceptable time to all parties. This will allow you to ensure the Auditor has properly maintained the Request Forms, which you have maintained was the intent of your original request.

CONCLUSION

For the foregoing reasons, it is my opinion that the Auditor did not violate the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joseph B. Hoage
Public Access Counselor

cc: Kurt Bachman